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Attorneys for Defendants

COUNTRYWIDE HOME LOANS, INC.,

COUNTRYWIDE FINANCIAL CORPORATION,

BANK OF AMERICA CORPORATION, KENNETH LEWIS,

DAVID SAMBOL and MICHAEL COLYER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SALMA MERRITT AND DAVID MERRITT,

Plaintiffs,

v.

COUNTRYWIDE FINANCIAL CORP.;
COUNTRYWIDE HOME LOANS, INC.;
BANK OF AMERICA; BEAR OF STERNS; JP
MORGAN; MERSCORP; FINANCIAL TITLE
CO.; CALWEST APPRAISAL; ANGELO
MOZILO; DAVID SAMBOL; STANFORD
KURLAND; MICHAEL COLYER; KENNETH
LEWIS; JOHN BENSON; JOHNNY CHEN;
BRYAN CAVE; JAMES GOLDBERG

Defendants.

Case No. 5:09-cv-01179 BLF

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' ADMINISTRATIVE
MOTION TO EXTEND THEIR TIME
TO FILE RESPONSES**

Date Action Filed: March 18, 2009

Trial Date: Not set

1 Defendants oppose Plaintiff David Merritt's request for an extension of time to file an
2 opposition to Defendants' Motion to Dismiss on the grounds that good cause does not exist for the
3 extension.

4 First, Plaintiffs failed to oppose Defendants' Motion to Dismiss by the March 7, 2016
5 deadline, despite having had 2 ½ months, including a prior extension, to do so. *See* ECF 241.
6 Plaintiffs further failed to file the current request for an extension until after the opposition
7 deadline passed, despite allegedly being disabled for the past two months. Indeed, Mr. Merritt
8 admits that the only reason he has now sought an extension is because Defendants' counsel sent
9 him an email about the opposition on March 8, the day after it was due.

10 Second, despite being allegedly disabled by gout since January 10, 2016, on January 21,
11 2016, Mr. Merritt filed a ten page Reply Brief on Plaintiffs' Motion for Leave to Amend. ECF
12 245. This shows that since the Court set the March 7 deadline, Plaintiffs have been able to prepare
13 substantive briefs and could have prepared the Opposition due March 7. Mr. Merritt also was able
14 to prepare the instant motion in a matter of hours.

15 Third, the letter Mr. Merritt procured on March 8, 2016, does not establish that he has not
16 been able to prepare an opposition. The letter, which is not from a doctor but from an assistant,
17 only reports that it "has been *intermittently* difficult for him to use his hands." The letter does not
18 say he has been constantly disabled over the last two months. Moreover, it simply reports what
19 Mr. Merritt told the physician's assistant on March 8. Its statement is simply hearsay from Mr.
20 Merritt, not a medical observation. In fact, there is no evidence that Mr. Merritt visited the doctor
21 on March 8, 2016, or at any time since January 11, 2016. (Mr. Merritt's Exhibit C indicates that he
22 was admitted a second time on January 11, not in March. ECF 248-3.)

23 Fifth, Mr. Merritt's continual excuses for delaying his opposition are internally
24 inconsistent. On January 6, 2016, Mr. Merritt filed a Motion to Extend Time and an accompanying
25 declaration stating that he had surgery scheduled for the next day, January 7, 2016. ECF 239 at
26 2:2-3 and 239-1 at 2:13-14. Yet, the exhibits to his current motion show that when he went to the
27 emergency room on January 10, 2016 for pain, he made no report of having had surgery, which
28 would undoubtedly been an important fact to disclose to a doctor.

1 Finally, Plaintiffs have repeatedly asked for continuances to delay their obligations. Their
2 conduct suggests that the current motion to extend is but another attempt to delay judgment, while
3 Plaintiffs continue to live in the residence without paying their mortgage.

4 Defendants request that the Plaintiffs' Motion to Extend be denied, and the Defendants'
5 unopposed Motion to Dismiss be granted without leave to amend.

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7 Dated: March 9, 2016

BRYAN CAVE LLP

James Goldberg
Thomas S. Lee

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9
10 By: /s/ James Goldberg

11 James Goldberg

12 Attorneys for Defendants
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